

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE COMMISSIONER OF HEALTH AND SOCIAL SERVICES**

In the Matter of)
)
F.O.) OAH No. 19-1148-ADQ
_____)

DECISION AND ORDER

I. Introduction

F.O. received Food Stamp benefits for June, July, and August 2019. The Department of Health and Social Services, Division of Public Assistance (DPA) learned that Mr. O. did not disclose certain employment and income that significantly reduced his household’s eligibility for those benefits. It later initiated this Administrative Disqualification case, alleging that Mr. O. committed a first known Intentional Program Violation (IPV) of the Food Stamp program.¹

DPA met its burden of proving by clear and convincing evidence that Mr. O. committed a first known IPV of the Food Stamp program. Therefore, he is disqualified from receiving Food Stamps for a period of 12 months and he is obligated to repay overpaid benefits.

II. Facts

The following facts were established by clear and convincing evidence:

F.O. and his partner E.G. live in No Name in a household of five, including themselves and three minor children.² On June 7, 2019, Mr. O. and Ms. G. signed and submitted an application for Food Stamp benefits.³ Ms. G. filled out the application. Mr. O. signed and dated it in two places: the Release of Information authorization and the Statement of Truth declaration. In the Statement of Truth section, Mr. O. attested under penalty of perjury that all information contained in the application was true and correct to the best of his knowledge.⁴ He also attested that he had read the “Rights and Responsibilities” section of the application and he understood the information provided there, including the program’s penalties for knowing violations of its rules.⁵

¹ Exhibits 1, 3.

² Exhibit 7, pp. 1-5. There are other family members living in Mr. O.’s home, but they were not included as household members for purposes of the Food Stamp application at issue in this case. Exhibit 9, p. 1.

³ Exhibit 7.

⁴ Exhibit 7, p. 12.

⁵ *Id.*

In the section requiring disclosure of household income, the application indicated only that Ms. G. worked for the Employer A. The other lines for employment income were crossed out. Mr. O. or Ms. G. also wrote “N/A” next to the box asking for any other sources of household income.⁶

On June 28, 2019, Mr. O. participated in a telephonic eligibility interview with Riki Johnson, one of DPA’s Eligibility Technicians.⁷ At the outset of the interview, Ms. Johnson reviewed with Mr. O. the information contained in the four-page “Rights and Responsibilities” attachment to the Food Stamp application. That review specifically addressed the requirement that applicants provide complete and accurate information. It also addressed the potential consequences for knowingly providing false, incorrect or incomplete information.⁸ Mr. O. understood and had no questions about his rights and responsibilities under the program.⁹

During the June 28th interview, Mr. O. indicated that Ms. G.’s seasonal job with the Employer A had ended. He also explained that he had a job with the Employer B. However, he worked in an on-call capacity and was not working regularly or earning any significant income.¹⁰

Based on the information Mr. O. provided regarding his household’s income, DPA approved the Food Stamp application.¹¹ It issued Food Stamp benefits totaling \$3,515 for the three months from June through August 2019. This included \$665 for June, \$1425 for July, and \$1425 for August.¹²

In August 2019, DPA Eligibility Technician Shanna Karella reviewed Department of Labor and Workforce Development data, and DPA learned for the first time that in addition to the Employer B, Mr. O. was employed by a second employer, Employer C.¹³ He started his seasonal job with the Employer C on May 28, 2019.¹⁴ On June 6, 2019 Employer C paid him gross wages of \$400, and on June 20th, it paid him \$951.¹⁵ Mr. O.’s paychecks from Employer C

⁶ Exhibit 7, pp. 6-7.

⁷ Exhibit 9; R. Johnson testimony. Ms. G. also participated in the interview.

⁸ Exhibit 7, pp. 15-18.

⁹ Exhibit 9, p. 1; Exhibit 7, p. 12; R. Johnson testimony.

¹⁰ DPA’s case note indicates that Mr. O.’s first quarter 2019 income from the Employer B job was \$90. Exhibit 9, p. 1. As of mid-August 2019, he had earned no other income from that employer. *Id.*, p. 3.

¹¹ Exhibit 9, p. 2.

¹² Exhibit 9, p. 2; Exhibit 12, p. 2.

¹³ Exhibit 9, p. 3; S. Karella testimony.

¹⁴ Exhibit 9, p. 3; Exhibit 11.

¹⁵ Exhibit 11.

dramatically increased after that, ranging between \$2,484 and \$3,601 for each of the five bi-weekly paychecks issued from July 3 to August 29, 2019.¹⁶

Based on the information obtained from the Department of Labor and Workforce Development, on December 5, 2019 DPA initiated this fraud proceeding.¹⁷ It alleged that Mr. O. committed a first known IPV of the Food Stamp program, and requested that Mr. O. be temporarily disqualified from receiving Food Stamp benefits and be ordered to repay the full amount of overpaid benefits.¹⁸ DPA calculated that Mr. O received \$3,102 in overpaid Food Stamps for the months of June, July and August 2019.¹⁹

DPA provided Mr. O. proper notice of the proceedings, and the hearing took place telephonically on February 21, 2020.²⁰ Mr. O. represented himself. Vance Canoy, an investigator employed by DPA's Fraud Control Unit, represented DPA. Mr. Canoy, Eligibility Technician Riki Johnson, and former Eligibility Technician Shanna Karella testified for DPA. The hearing was recorded. All submitted documents were admitted into the record. The record closed at the end of the hearing.

III. Discussion

In order to establish an Intentional Program Violation of the Food Stamp program, DPA must prove the violation by clear and convincing evidence.²¹ To do so, it must show that Mr. O. intentionally “made a false or misleading statement, or misrepresented, concealed, or withheld facts.”²²

The Division met its burden in this case. Mr. O. understood his responsibility to disclose all employment and household income as a requirement for Food Stamps. He had already begun work and actually received his first paycheck from the Employer C on June 6, 2019, the day before he signed his Food Stamp application on June 7, 2019. He had received two paychecks before he participated in the June 28th eligibility interview. And Mr. O. continued earning

¹⁶ *Id.*

¹⁷ Exhibit 3.

¹⁸ Exhibit 1, p. 7.

¹⁹ Exhibit 12.

²⁰ To ensure that proper notice was provided, the hearing was rescheduled once, from February 5 to February 21, 2020. During the February 21st hearing, Mr. O. agreed he had received notice of the hearing as well as DPA's evidence packet; he called to participate in the rescheduled hearing after Ms. G. reminded him of it.

²¹ 7 C.F.R. § 273.16(e)(6). Clear and convincing evidence is established if the truth of the asserted facts is highly probable. *Saxton v. Harris*, 395 P.2d 71, 72 (Alaska 1964).

²² 7 C.F.R. § 273.16(c).

significant income from that employer throughout the summer, yet he did not report this employment or income to DPA at any time.

This was not an inadvertent oversight. On the application and during the eligibility interview, Mr. O. responded to specific and direct questions about his employment and income. The only reasonable inference to be drawn from his failure to accurately respond is that he consciously withheld this information. These circumstances show clearly and convincingly that Mr. O. intentionally misled DPA about his income by withholding the fact of his employment and income from the Employer C. As a result of his conduct, Mr. O.'s household received Food Stamp benefits to which it was not entitled.

IV. Conclusion and Order

DPA showed that Mr. O. committed an Intentional Program Violation as defined by the Food Stamp program regulations. As this is his first known Food Stamp IPV, Mr. O. is disqualified from receiving Food Stamp benefits for a twelve-month period.²³ The Food Stamp disqualification period shall begin on May 1, 2020.²⁴ This disqualification applies only to Mr. O. and not to other individuals who may be included in his current household.²⁵ For the duration of the disqualification period, Mr. O.'s needs will not be considered when determining eligibility and benefit amounts for his household. However, he must report his income and resources as they may be used in those determinations.²⁶

The Division shall provide written notice to Mr. O. and any remaining household members of the benefits they will receive during the period of disqualification, or that they must reapply if the certification period has expired.²⁷

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²³ Exhibit 1 pp. 1, 7.

²⁴ 7 USC 2015(b)(1); 7 C.F.R. § 273.16(b)(1), (e)(8)(i); *Garcia v. Concannon*, 67 F.3d 256, 259 (9th Cir. 1995).

²⁵ 7 C.F.R. § 273.16(b)(11).

²⁶ 7 C.F.R. § 273.11(c)(1).

²⁷ 7 C.F.R. § 273.16(e)(9)(ii).

If overpaid Food Stamp benefits have not been repaid, Mr. O. is also required to make restitution.²⁸ If he disagrees with the calculation of the amount of overpayment to be repaid, Mr. O. may request a separate hearing on that limited issue.²⁹

DATED this 2nd day of March, 2020.

By: Signed
Andrew M. Lebo
Administrative Law Judge

Adoption

Under a delegation from the Commissioner of Health and Social Services and under the authority of AS 44.64.060(e)(1), I adopt this decision as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 17th day of March, 2020.

By: Signed
Signature
Andrew M. Lebo
Name
Administrative Law Judge
Title

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]

²⁸ 7 C.F.R. § 273.16(b)(12); 7 C.F.R. § 273.16(e)(8)(iii).

²⁹ 7 C.F.R. § 273.15.